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EMRICH & DITHMAR
ATTORNEYS AND COUNSELORS
SUITE 3000
300 SOUTH WACKER DRIVE
CHICAGO, IL 60606

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In re Application of
Michael M. Thackeray et al
Application No. 09/943,966
Filed: August 31, 2001
Attorney Docket No. 220

OFFICE OF PETITIONS ^
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed January 20, 2004 and resubmitted on August 16, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed January 30, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on March 31, 2002.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (1) above.

As to item (1), the USPTO acknowledges the timely receipt of a partial reply on February 21, 2002. However, the Notice mailed January 30, 2002, additionally required the submission of substitute drawings in compliance with 37 CFR 1.84 because the "drawing sheets do not have the appropriate margin(s) (see 37 CFR 1.84(g)). Each sheet must have a top margin of at least 2.5 cm. (1 inch), a left side margin of at least 2.5 cm. (1 inch), a right side margin of at least 1.5 cm. (5/8 inch), and a bottom margin of at least 1.0 cm. (3/8 inch)." Therefore, timely compliance with this requirement must have been made in order to avoid the abandonment of the application.

On reviewing the transmittal letter submitted with the partial reply of February 21, 2002, there is no indication that petitioner submitted substitute drawings as required by the January 30, 2002 Notice within the maximum extendable period for reply.

MPEP 608.02(b) states that "[i]f a drawing is not timely received in reply to a notice from the Office or a letter from the examiner who requires a drawing, the application becomes abandoned for failure to reply." That is, applicants were given Notice that substitute drawings had to be supplied to avoid the abandonment of this application.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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Post Office Box 1450
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By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300

Pursuant to petitioner's authorization, Deposit Account No. 05-1060 was charged \$665.00 for the petition to revive an unintentionally abandoned application.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.


Wan Laymon
Petitions Examiner
Office of Petitions